



**TOWN OF WEARE**  
PLANNING BOARD  
ZONING BOARD OF ADJUSTMENT  
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Naomi L. Bolton  
Land Use Coordinator

**Office Hours:**  
Monday  
thru  
Friday  
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT  
MINUTES  
NOVEMBER 4, 2008  
(Approved as amended 1/6/09)**

**PRESENT:** Ian McSweeney, Vice Chairman; Forrest Esenwine; Malcolm Wright, Alternate; Elwood Stagakis, Alternate; Neal Kurk, Alternate; Naomi L. Bolton, Land Use Coordinator.

**GUESTS:** Ginger Esenwine; Marla Umstead; Kevin Umstead; Art Siciliano, LLS; Aaron Colburn; Craig Francisco; Earl Sandford; Wayne Daniels; Richard Howson

**I. INTRODUCTION:**

Vice Chairman Ian McSweeney called this meeting to order at 7:30 PM and asked the board members present to introduce themselves. Vice Chairman McSweeney explained to those present the way by which the board conducts business. Vice Chairman McSweeney appointed Neal Kurk, Malcolm Wright and Elwood Stagakis as voting members for tonight's meeting.

**II. ADMINISTRATIVE ITEMS:**

There were no administrative items for this evening and the board went right to the hearings.

**III. PUBLIC HEARINGS:**

Vice Chairman McSweeney stated for the record he will be stepping down later on in the evening for the same article item and felt that should be disclosed.

Case #0808 Craig and Jill Francisco (Continued Hearing)  
Variances, Article 17 & 28, Sections 17.1.1 & 28.9  
Applicant is requesting permission to construct a driveway within 10 feet of a wetland and the driveway access the lot for construction of a single family home off a private road.  
Tax Map 107-030 Abijah Bridge & Woodfern Rd (Private)

Craig Francisco was present. Mr. Francisco explained that the property was subdivided in 1972 by Gerard Bodner. In 1973 Ron Fellows bought lots 5 & 6, sometime later he combined these lots. In 2004 Mr. Francisco and his wife purchased the lot. In 2005 they did a lot line adjustment making this lot the same as lot 5 was in 1973 and he annexed the rest onto the back of his property, too which he is an abutter. The frontage on this lot

exists on Abijah Bridge Road, but it comes in at about 12% and there is not enough site distance to obtain a driveway permit.

Neal Kurk stated that we turned down another applicant that wanted to put a house on a lot on this private road, aren't you asking us to do the same thing? Craig Francisco stated that his lot has legal frontage on a Class V road, it is just too steep and unsafe to get access and it would environmentally damage the wetlands to get to the building envelope from the Class VI roadway, which is the south part of the lot. He stated that he could get a driveway permit off of Abijah Bridge but he didn't think the Town would like that. Mr. Kurk asked if it would be more expensive off of Abijah Bridge Road or Wildwood Road. Mr. Francisco stated that coming off Abijah Bridge Road would be more expensive. Forrest Esenwine stated that he felt the buildable part of the lot is extremely small compared to the whole lot in general. That is the only spot to build on that lot.

Mr. Kurk asked, you are asking for two variances, right? If you didn't get both variances then the driveway would have to come in from Abijah Bridge Road. Mr. Francisco responded that he would still need to get the variance to Article 28.9 and a dredge and fill permit from NHDES.

Mr. Francisco then addressed the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: The surrounding properties have residential uses. The proposed use for this lot is also residential. Wildwood Road services several lots currently. The use of a portion of the wetland buffer would not affect the surrounding properties.
2. That the granting of the variance will not be contrary to the public interest because: The property is zoned residential. The proposed use is residential. The variances are necessary to access the buildable area of this lot. There would be no public funds used on the road as it is a private road.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The lot has been existing for several years and had adequate frontage on a Class V road. However, the sight distance for a proposed driveway does not have reasonable sight distance and the road grade is very steep.
  - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: The access from Abijah Bridge Road would have to cross the brook and disturb the associated buffer. The variance would eliminate the need to cross the brook and drastically reduce the impact to the wetland buffer.
4. That through the granting of relief by variance substantial justice will be done because: The proposed use is residential. The variances are required to access this lot in the safest and most environmentally friendly manner as possible.

5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: This area was subdivided in 1972, prior to the Town adopting zoning ordinances. The parcel is zoned residential. These are the only variances needed to access this property and allow it to be developed in a residential fashion.

Mr. Francisco stated that he has about 50 acres to the east and he has only about 50 feet of the frontage to access that parcel and in order to get to this property would still need to cross the wetlands.

Forrest Esenwine asked how long he has had the lot and was he aware of the zoning ordinances when he bought it. Mr. Francisco responded that he didn't realize that it was this wet.

Approving Abutters: NONE

Disapproving Abutters: Marla Umstead, 21 Wildwood Road, was here last month when we talked about the road. Part of their concern is that both Abijah Bridge Road and Wildwood come down and ends up in the marshy area. In the past 5 years the road has washed out where Abijah Bridge Road and Wildwood Road meet. They have had problems with drainage coming down and the culvert under the road. One of the concerns is that if that was going to be granted and the driveway comes down and causes additional water at that point it would be the most critical. The placement of the driveway in the winter would be right next to theirs, which could cause a problem with removing snow.

Mr. Kurk asked if the driveway location is too close to their property, is this their concern? Mr. Umstead responded that their concern is more runoff being transferred to a critical part of the already existing situation. Mr. Kurk pointed that the board could possibly grant this with conditions that the lot owner would be responsible for all washouts that might occur that are related to this driveway.

Public at Large: NONE

Other Boards: NONE

Rebuttal of Applicant: Mr. Francisco stated that he understands Mrs. Umstead's concerns. He would be willing to install a second culvert right next to the other one which would double the capacity to help with getting any water get through.

Elwood Stagakis stated that Mr. Francisco is willing to increase the size of the culvert and not be responsible for any washouts.

Mr. Kurk pointed out that Mrs. Umstead spoke of the closeness of the driveway. Mr. Kurk asked how close the driveway would be to the property line. Craig Francisco responded that it would be about 5 feet from the property line. There is no setback for a driveway to a property line. The only requirement is that the driveway has to be 100% on your own property, but it could run up the side of the property line.

Rebuttal: Mrs. Umstead stated that she would like to see the larger trees on their property kept and not removed to act as a buffer from the building lot.

Vice Chairman McSweeney closed this hearing at 8:10 PM.

DISCUSSION: There was none at this point and the board moved to the decision.

CASE DECISION: Point #1: Forrest Esenwine moved to accept point #1; Neal Kurk seconded the motion. Discussion: Mr. Esenwine stated that the question he has is that putting in just a house wouldn't have any property damage, but putting in the house could possibly have damage with regard to the run off. We don't know that unless we have another large storm. Elwood Stagakis stated that putting in drainage would improve the value but we have no way of determining that. Ian McSweeney stated that there is a difference between regular runoff and another 100 year storm. If we approve this we should consider to attempt to control normal runoff but controlling runoff for a 100 year storm would be difficult. Vote: 0 in favor and 5 opposed (Kurk; Wright; McSweeney; Esenwine and Stagakis). Point #2: Forrest Esenwine moved to accept point #2; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that the public interest would be the Town in general as well as the area. As far as the Town is concerned it would not be contrary to the Town's concerns. But as far as the area, here again contrary to the public interest could be referred back to the discussion on point #1. If that scenario were to play out it would be contrary. It can be looked at both ways. Mr. Kurk agreed on behalf of the applicant that the access could be done by Abijah Bridge Road but could create a safety hazard. He could get a wetlands permit but one of a lesser one if he could get access from Wildwood Road. It would be undesirable to grant this because the ordinance says no building on Class VI or private roads. We could possibly be making the runoff situation worse for those that live there. There are arguments on both sides, but it has to be weighed as to which is more important. Mr. Esenwine stated that the argument could be also made that the granting of this could be precedent setting. Vote: 0 in favor and 5 opposed (Kurk; Wright; McSweeney; Esenwine and Stagakis). Point #3aa: Forrest Esenwine moved to accept point #3aa; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine felt that it is pretty well demonstrated that the access from Abijah Bridge Road is not acceptable due to sight distance and road grade. He feels it has been demonstrated. Ian McSweeney stated that the point was brought up earlier that the proposed access would be less wetlands impact coming in from Wildwood Road versus Abijah Bridge Road. Vote: 2 in favor (Esenwine and Kurk) 2 opposed (Wright and McSweeney) and 1 abstention (Stagakis), therefore it doesn't pass. Point #3bb: Forrest Esenwine moved to accept point #3bb; Neal Kurk seconded the motion. Discussion: Mr. Esenwine stated that his issue is that this condition has existed on the property since it was subdivided in 1972. The present owner purchased it in 2004, so he purchased the property well aware of what the lot was like. He should have also been aware of what the zoning ordinance was, so Mr. Esenwine felt that he created his own hardship. He felt the hardship was created not by something he didn't know about. Mr. Kurk stated that he felt this is the heart of the application. He can make it a buildable lot in one of two ways. He can make a safer access and have less impact. He also does have

another way to do it; it's just not the preferred way. He can't see how he would meet the test of 3bb. Vote: 0 in favor and 5 opposed (Kurk; Wright; McSweeney; Esenwine and Stagakis). Point #4: Forrest Esenwine moved to accept point #4; Malcolm Wright seconded the motion. Discussion: none. Vote: 1 in favor (Esenwine) and 4 opposed (Kurk; Wright; McSweeney and Stagakis). Point #5: Forrest Esenwine moved to accept point #5; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that he would just defer his comments back to point #3bb. Vote: 0 in favor and 5 opposed (Kurk; Wright; McSweeney; Esenwine and Stagakis).

Forrest Esenwine moved to grant the variances as requested on case #0808; Neal Kurk seconded the motion. Vote: 0 in favor and 5 opposed (Kurk; Wright; McSweeney; Esenwine and Stagakis). Reason: By State Statute all five requirements for a variance, including a showing of hardship, have to be met in the affirmative in order for the Variance to be granted. All five of the points failed.

Case #0908	Daniels Lake Development Corp (Continued Hearing)
	Variance, Article 28, Section 28.9
	Applicant is requesting permission to construct a driveway within
	a 25 foot vegetative buffer, to be access for a single family home.
	Tax Map 411-191                      Twin Bridge Road

Earl Sandford and Wayne Daniels were present. Mr. Sandford stated in the effort of full disclosure, he has had some working relationships with Ian McSweeney and he doesn't have any issues with Mr. McSweeney sitting on the board for this case. Vice Chairman McSweeney stated that he didn't have any issues. He asked if the board had any issues. The board didn't have any issues, so Mr. Sandford proceeded with his presentation. Mr. Sandford stated that this parcel contains a total of 256 acres with its access off of Twin Bridge Road. The prime building spot is 5.4 contiguous acres of a higher spot. They are not disturbing any vegetation. This is an existing tote road they would be turning into a driveway permit. Forrest Esenwine asked if this 5.4 acre portion is a part of the 256 acres. Mr. Sandford stated that it is a separate piece but it is within the whole lot of 256 acres. Neal Kurk stated that he is concerned about the situation that we don't get the whole story at once. Mr. Sandford then showed the board a conceptual that will be coming forward for approval of three (3) twelve (12) acre lots. But that will be coming later to the Planning Board. They have someone interested in this to build a single family home, so that is what they are asking for at this time.

Mr. Sandford stated that the purpose of this plan is to obtain a variance to impact a 25-foot wetland buffer as follows:

- 488 square feet of buffer and wetland impact to install a 20-foot long driveway culvert.
- 9,526 square feet of buffer impact to upgrade the surface of an existing driveway.

The driveway would access a proposed single family on an existing lot of record. The proposed driveway is an upgrade of an existing woods road which runs from Twin Bridge Road to the proposed house site.

Mr. Sandford addressed the five points of hardship as follows:

1. There will not be a diminution of value surrounding properties as a result of the granting of this variance because: The abutting neighborhood is comprised of single family homes similar to the proposal, which is in keeping with the surrounding community and therefore should not adversely affect real estate values in the neighboring areas.
2. The granting of a variance will not be contrary to the public interest because: The minor impact of wetland buffer and addition of one house will have no adverse effect on the general public or surrounding neighborhood.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The only access to this build able area is between the wetland and an abutting property at the bottom of the steep slope.
  - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: Any other access to this build able area other than the existing roadway would be unreasonable and would include substantial slope excavation and more wetland and wetland buffer impact.
4. That through the granting of relief by variance substantial justice will be done because: It will allow the landowner to enjoy the reasonable use of their property, similar to that of the surrounding neighborhood.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The purpose of the ordinance is to protect undisturbed wetland. The area adjacent to the existing road does not have an existing buffer. The buffer will be maintained in all other areas of the lot, which will meet the ordinance requirements.

Forrest Esenwine stated that he needed some clarification. Mr. Sandford mentioned that on this driveway/tote road there are some areas that are low and will have to be brought up; does that mean the existing road right now is above the flooding area? Mr. Sandford responded that the original tote road was cut into the side of the hill. Putting in a driveway will require some filling of the property to bring it up. Elwood Stagakis stated that this request is for a driveway to a single house; will it ever be a road? Mr. Sandford responded, no, it is a single driveway for a single family home.

Approving Abutters: NONE  
Disapproving Abutters: NONE  
Public at Large: NONE  
Other Boards: NONE

Vice Chairman McSweeney closed the public hearing at 9:18 PM.

DISCUSSION: There was no further discussion to be had before moving on to the case decision.

**CASE DECISION:** Point #1: Forrest Esenwine moved to accept point #1; Malcolm Wright seconded the motion. Discussion: Mr. Esenwine stated that personally he agrees that a single family home in that area will not adversely affect other real estate in that area. Vice Chairman McSweeney agreed. It is fairly buffered from other homes. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed. Point #2: Forrest Esenwine moved to accept point #2; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that the question is, will the impact in that buffer or an additional buffer have any affect on homes in the neighborhood. What is going to be done with the culvert installation, he doesn't think it will be an adverse affect on the public or surrounding neighborhood. He would agree with point #2. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed. Point #3aa: Forrest Esenwine moved to accept point #3aa; Elwood Stagakis seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed. Point #3bb: Forrest Esenwine moved to accept point #3bb; Malcolm Wright seconded the motion. Discussion: Mr. Esenwine stated that he can't see any other access to that area that would be reasonable. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed. Point #4: Forrest Esenwine moved to accept point #4; Malcolm Wright seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed. Point #5: Elwood Stagakis moved to accept point #5; Malcolm Wright seconded the motion. Discussion: Neal Kurk stated that the ordinance states a 25 foot buffer is necessary, why is that not contrary to the spirit of the ordinance. Forrest Esenwine felt that it already exists today and allowing fill to take place would make the situation better. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed.

Forrest Esenwine moved to grant the variance for case #0908 as requested; Neal Kurk seconded the motion. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed.

Case #1008      Chester Colburn  
Variance, Article 17.1.1  
Applicant is requesting permission to build a single family home.  
Tax Map 102-010      Cottage Road (Private Road)

Art Siciliano and Aaron Colburn were present for this hearing. Mr. Siciliano stated that Mr. Colburn has a lot on Cottage Road that contains a little over 3 acres. The building site is pretty much high and dry. It has been in existence since 1967. There are approximately 55 homes in there. There are 4-5 vacant lots in that area. Mr. Siciliano stated that Lakeview Drive is paved and Cottage Road is gravel and both are private roads. The portion of Cottage Road that has to be upgraded is about 600 feet. There are two (2) dwellings across from this lot that are year round.

Mr. Siciliano then proceeded through the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: The proposed home will be compatible to those in the neighborhood. The owners have proposed to upgrade the road which will allow better access to this lot and other lots on the road. A portion of the road is already upgraded for vacation homes (Lake Shore Village Resort).
2. That the granting of the variance will not be contrary to the public interest because: There will be no public funds used for the upgrade and maintenance of the road. It would be in the public interest to have safe access to a pre-existing lot of record and other homes located on the road.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: This property is located on a private road and has been a lot of record since 1967. The special condition of the lot being a legal pre-existing building lot but on a road not approved for a permit to build.
  - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: The lot is on a private road. There is nothing that the owners can do to change the status of the lot. The owner is willing to upgrade the road for better access. They cannot purchase adjacent land that would give them frontage on a Class V road. There is no other alternative for them to pursue.
4. That through the granting of relief by variance substantial justice will be done because: A variance with conditions will allow use of the property as it could have prior to zoning. The road can be upgraded to a standard that will allow better access for emergency vehicles, the neighbors and the public.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The area is zoned residential and building a single family home on an accessible road is not contrary to the spirit of the ordinance. The spirit of the ordinance is to address safety concerns and prevent uncontrolled development. Neither of those concerns is relevant to this variance. The road if necessary will be brought up to a standard of safe access and this is a lot in an approved subdivision prior to zoning and cannot be further subdivided.

Forrest Esenwine stated that it appears that this subdivision is pretty much built out. The problem he has is that it doesn't meet the current ordinance. It is on a private road and up to current standards. But by continuing doing this one lot at a time business is like building a subdivision taking 30 years to do it and you are getting in under the ordinance not having a class V road in a subdivision. How long is it going to be before it is done?

Elwood Stagakis stated that it seems to be well built up. He asked who maintains the road and is there an agreement? Mr. Siciliano responded that it is Lake Shore Village Resort who maintains it. Mr. Stagakis asked if it is written. Aaron Colburn stated that



there are a few residents that have upgraded portions of the road in order to get their building permit. He is willing to upgrade the road, as the rest of the people did.

Mr. Siciliano stated that Mr. Colburn would be upgrading the road from Lakeview Drive to this lot. Mr. Siciliano offered a condition that they would offer a road maintenance agreement with the residents on the 600 feet he is proposing to upgrade.

Mr. Kurk asked if there is any difference between Mr. Colburn's lot and the other un-built lots; would be no difference for the board to grant those as well? Basically we have a subdivision in progress on a private road, that all require a variance to build. Mr. Kurk further pointed out that the letter from Carl Knapp, Public Works Director indicates the standard of a driveway not a road upgrade.

Mr. Siciliano reviewed the letter and agreed with Mr. Kurk. He stated that he would like to continue this hearing to December to get better road information and another letter from Mr. Knapp.

Forrest Esenwine moved to continue this hearing at the request of the applicant's representative to December 2, 2008; Malcolm Wright seconded the motion, all in favor.

Case #1108    Richard Howson  
Variance, Article 3, Section 3.5.1  
Applicant is requesting permission to construct a 12 x 12 shed within the setback.  
Tax Map 108-070                      Pondview Road (Private Road)

Mr. Howson was present. He stated that he is here for variance to a setback for the construction of a 12 x 12 shed. The board asked several questions particularly with regard to the possibility of locating the shed in another location as to not require a variance. The board also looked at pictures in relation to the existing site. Mr. Howson felt that the only area he has to put the shed is where he has requested it.

Mr. Howson then went through the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: The quality of the sheds construction will be in keeping with the neighborhood. The area is very rural and the shed will be located in a discrete position.
2. That the granting of the variance will not be contrary to the public interest because: I am requesting relaxation of the setback requirement in relation to the private right-of-way. There are no nearby residences or structures other than my own. I have already discussed this proposal with all three abutters and they have documented their support of the plan within an attached memo.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: There is no

- other potential site for the shed other than the one depicted on the site plan.
- bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: see aa above. The remainder of the lot in question is a 35%+ slope with large outcroppings (see photos attached).
4. That through the granting relief of the variance substantial justice will be done because: I will be permitted the use of my property with no impact on my neighbors or the community in general.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The nearest structure (other than my own garage) is 60 feet away. I am requesting relaxation of the requirement from a private right of way that is used solely by me.

Approving Abutters: Mr. Howson wants the record to reflect that he has obtained a memo from the abutters expressing their support for this request.

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Vice Chairman McSweeney closed this hearing at 10:25 PM.

DISCUSSION: There was no need for any further discussion, so the board proceeded to the case decision.

CASE DECISION: Point #1: Forest Esenwine moved to accept point #1; Neal Kurk seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed. Point #2: Forrest Esenwine moved to accept point #2; Neal Kurk seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed. Point #3aa: Forrest Esenwine moved to accept point #3aa; Neal Kurk seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed. Point #3bb: Forrest Esenwine moved to accept point #3bb; Neal Kurk seconded the motion. Discussion: Mr. Esenwine stated that his only comment would be that he felt we beat that to death. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed. Point #4: Elwood Stagakis moved to accept point #4; Neal Kurk seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed. Point #5: Elwood Stagakis moved to accept point #5; Forrest Esenwine seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed.

Forrest Esenwine moved to grant the variance for case #1108 with the condition that the shed is to be located no closer than 6.5' to the right of way as depicted on the site plan for Richard Howson, dated September 2008, signed by Arthur Siciliano; Neal Kurk seconded

the motion. Vote: 5 in favor (Kurk; Wright; McSweeney; Esenwine and Stagakis) and 0 opposed.

Ian McSweeney stated that he will be removing himself from the board as he is the applicant for the next hearing. Forrest Esenwine will be the acting chairman for the next hearing.

Case #1208 Ian McSweeney (Owner: PAC-NH Realty Trust)  
Variance, Article 28, Section 28.9  
Applicant is requesting permission to infringe on the 25' wetland buffer.  
Tax Map 411-328 22 Buxton School Road

Ian McSweeney stated that he applied for a variance under Article 28.9, but Article 28.9.1 allows for an exception and he wasn't sure if he qualified for that or not. His intention is to lease the lot to a neighbor for their cows, which is an agricultural use.

Forrest Esenwine stated that as he looked over the application and it appeared that the pond will not be in the wetland and he can't see where a pond is encroaching into a wetland buffer. Mr. Esenwine felt that if he is putting in the pond for an agricultural use, then he would be exempt.

Neal Kurk asked Mr. McSweeney why in the application for DES it says that you want to create a wildlife and recreation pond in the application and here you are stating that it is going to be used for agricultural purposes. Mr. McSweeney explained there is not a place to indicate the pond would be for agricultural purposes. Mr. McSweeney further added that it is going to be used technically for both.

Mr. Esenwine stated that he could add the agricultural part to application if he wanted to. Applicants are welcome to add anything they would like to convince the board to grant approval.

Neal Kurk asked what percentages and to what it would be used. Mr. McSweeney stated that he felt it would be 90-100% for wildlife; the rest would be for recreational that would include ice skating; he also plans on using part of the pond to water his gardens; and he is also going to pump water to fill basins to feed the livestock for his neighbors.

Malcolm Wright asked Mr. McSweeney if he was going to disturb the wetland buffer to create this pond and then after the pond gets built then there will be a new wetlands buffer zone. He doesn't see any issue with the agricultural uses.

Neal Kurk stated that he couldn't see any harm in exempting him from it, as it is a fairly new article. He would think that he could withdraw his application and proceed straight to DES.

Ian McSweeney stated that he would like to withdraw his application.

Neal Kurk moved to accept the withdrawal request due to the fact that agricultural activity that will be occurring for this pond therefore exempting him per Article 28.9.1; Malcolm Wright seconded the motion. Vote: 4 in favor (Kurk; Wright; Esenwine and Stagakis) and 0 opposed.

Vice Chairman McSweeney returned to the board for the remainder of the evening.

**IV: OTHER BUSINESS:**

OCTOBER 7, 2008 MINUTES: Forrest Esenwine moved to accept the October 7, 2008 minutes as amended; Elwood Stagakis seconded the motion, all in favor.

**V. ADJOURNMENT:**

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 10:50 PM; Neal Kurk seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton  
Land Use Coordinator